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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,843

03/31/2005

Frederic Noelle

38033

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116 7590 07/31/2007
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EXAMINER

MATZEK, MATTHEW D

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

07/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/529,843

Applicant(s)

NOELLE ET AL.

Examiner

Matthew D. Matzek

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 10-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the Ferencz et al. patent fails to disclose an increase of filaments in the CD. Applicant claims an "increase in filaments across the nonwoven width" due to disposing the die in an angular orientation relative to the nonwoven. The description of the forming process is vague and unclear, because even if the dies are directly over the nonwoven it is forming they are still at an angular orientation (i.e. 90 degrees). Therefore, regardless as to what angle Ferencz et al. use the dies are at an angle. With regards to the term "increased", it is unclear to Examiner what Applicant actually wants to claim without some quantification of the relative term "increased". It appears to Examiner that the thrust of Applicant's invention is actually directed to new method of forming a nonwoven, not the actual nonwoven. Applicant argues that without the claimed increase of filaments in the CD there is no reason to expect that the applied reference possesses the claimed physical properties. As shown in the previous Office Action some of the claimed isotropic properties are actually provided in Ferencz et al. As pointed out in the converted data provided by Applicant half of the CD index values exceed the claimed values (1.49 rounds up to 1.5 when only providing values to the 0.1 as claimed by Applicant). Applicant points to test data in Ferencz et al. to demonstrate that the applied reference lacks inherency to the claimed properties. Applicant has attempted to demonstrate isotropy through the instantly claimed properties. The claimed density, strength ratio and tensile strength index in the CD are provided by Ferencz et al. as demonstrated in the previous Office Action and the in converted CD Index values on page 6 of the After Final amendment dated 7/11/2007, and as such the burden to show that Ferencz et al. does not reasonably possess the claimed properties the claimed invention has been properly shifted to Applicant. Examiner has reviewed the submitted copy of the ASTM standard and recognizes that strip tensile and grab test properties are different and evaluate different properties. Examiner has relied upon the strip tensile values to anticipate the claimed properties and the basis of inherency to meet those explicitly disclosed by Ferencz et al. Applicant clearly states on page 9 of the Amendment dated 7/11/2007 that the CD filament concentration of the claimed invention is believed to be associated with the CD index properties and the improved isotropy. Examiner would like to point out that Ferencz et al. anticipate the claimed CD index properties, strength ratio, density and basis weights. As such, Examiner feels that the desired "improved isotropy" is actually disclosed by the applied reference.



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